

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

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CLERK, U.S. DISTRICT COURT
ST. PAUL, MNJAMES MARK VOGEL, 208979

(Enter the full name of ALL plaintiff(s) and prisoner number(s) in this action)

vs

Civil No.

11cv446 PJS/JTGCOMPLAINT FOR VIOLATION OF
CIVIL RIGHTS UNDER 42 U.S.C.
1983AITKIN CTY. SHERIFF, SCOT TURNERDEBRA HAMILTON, JAIL ADMINISTRATOR,JEREMY SWENSEN, ASST. JAIL ADMIN.

(Enter the full name of ALL defendant(s) in this action)

JANET LARSEN, LPN, Dianne Grinde, D.O.C. Rep.

ALICIA PETERSEN, JAIL NURSE.

1. PREVIOUS LAWSUITS

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to your imprisonment in the last three years?

Yes

No

B. If your answer to A is Yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

1. Parties to this previous lawsuit:

Plaintiffs

JAMES MARK VOGEL, 208979

Defendants

SCOT TURNER, AITKIN SHERIFF,
DEBRA HAMILTON, JAIL ADMIN.
JEREMY SWENSEN, ASST. JAIL ADMIN.,
JANET LARSEN, LPN,
ALICIA PETERSEN, JAIL NURSE.

2. Court (if federal court, name the district. If state court, also name the county)

AITKIN CTY. DISTRICT COURT

3. Case Number 01-CV-10-912

4. Name of judge to whom case was assigned

JUDGE JOHN SOLIEN**SCANNED**

FEB 23 2011

U.S. DISTRICT COURT ST. PAUL

36K

5. Cause of Action (Cite statute under which you filed and write a brief statement of the case): The cause of action is a violation of my 1st, 5th, 8th, and 14th Amendment civil rights under the Constitution of the United States and the Constitution of the State of Minnesota. I was denied medical care at the Aitkin Cty. Jail for 183 days when I had a pain in my abdomen that wouldn't go away. I had to plead guilty to get medical care, and it turned out I had incurable cancer.

6. Disposition (For example: Was the case dismissed?Appealed? Still pending?)

Case is pending, but Motion to Dismiss Without Prejudice has been filed with the state district court. (Motion To Dismiss granted 2/10/2011)

7. Approximate date of filing of lawsuit November 2010

8. Approximate date of disposition No disposition at this time

9. Attach copy of disposition if not from Federal District Court of Minnesota.

II. PLACE OF PRESENT CONFINEMENT

A. Is there a prisoner grievance procedure in the institution?

Yes No

B. Did you present the facts relating your complaint in the prisoner grievance procedure?

Yes No

C. If your answer is Yes:

1. What steps did you take? I filed 33 medical requests in 183 days, and a grievance with the jail administrator at ACJ.

2. What was the result? Nothing was done at all, even when my doctor sent jail officials letters stating I needed to see a gastro-intestinal specialist, still nothing was done.

3. Attach a copy of disposition

D. If your answer is No, explain why not: I followed the chain of command as far as I could at the Aitkin County jail. I filed the 33 requests for medical care in a period of 183 days. I filed a grievance with jail administration and still nothing was done. Now the jail refuses my requests for discovery of the medical records, and the grievance I filed. They also refused to fill out the "Certificate of Funds" so that I could file this case before.

III PARTIES

(In Item A below, place your name in the first blank and place your present address in the second blank. Do the same for additional plaintiffs)

A. Name of Plaintiff: JAMES MARK VOGEL, 208979

Address: 7525 4th Ave, Lino Lakes, MN 55014

Additional Plaintiffs:

NONE.

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(In Item B below, place the full name of the defendant in the first blank, official position in the second blank, and place of employment in the third blank. Do the same for all additional defendants, using a separate page, if necessary)

B. Name of Defendant: SCOT TURNER, ACJ SHERIFF
DEBRA HAMILTON, JAIL ADMIN.
employed as: JEREMY SWENSEN, ASST. JAIL ADMIN.
JANET LARSEN, LPN
ALICIA PETERSEN, JAIL NURSE.
at: AITKIN COUNTY JAIL

Additional Defendants Dianne Grinde, Representative of D.O.C.

IV. **STATEMENT OF CLAIM**

Provide a concise summary of the facts on which your claim is based. Describe how each individual defendant is personally involved, including dates, places and specific wrongful acts or omissions of each defendant. Each factual allegation should be set forth in a separate numbered paragraph. (All paragraphs in the "STATEMENT OF CLAIM"

should be consecutively numbered.) Do not give any legal arguments or cite any cases or statutes.

Attach extra sheets if necessary. (See Attached Also) 1. Sheriff Scot Turner. I sent a letter to Sheriff Turner about denial of medical care and he never replied. 2. Deb Hamilton, Jeremy Swensen. I filed a grievance and the grievance was ignored. When I said I would contact D.O.C. Rep. they laughed and said, "go ahead." 3. Janet Larsen. She refused to bring me to the hospital and misdiagnosed cancer, which I was told even a layman should have discovered. 4. Alicia Petersen, Jail Nurse. She did not recommend a hospital or any tests to be done and began to ignore my requests for medical care. 4. Dianne Grinde. Rep. for D.O.C. She ignored my complaints of pain and refused to tell the jail to bring me to the hospital.

V. **RELIEF**

State briefly exactly what you want the court to do for you:

Make no legal arguments. Cite no case or statutes.

Because of the Defendants actions, I sat in the Aitkin County jail for 183 days in pain and suffering. My cancer was not diagnosed when it should have been, in its earliest stage, and now it's incurable. I want the Court to find the Defendants guilty and award me damages, Injunctive Relief, and Declaratory Relief. Damages of \$500,000.00.

I (We) hereby certify under penalty of perjury that the above petition is true to the best of my (our) information, knowledge and belief.

Signed this 15 day of February, 20 11

Signature(s) of Plaintiff(s)

James M. Vogel

STATEMENT OF [REDACTED] CLAIMS.

I, James M. Vogel, do swear that the following facts are true and correct to the best of my knowledge.

In October/November of 2008, I began to have abdominal pains that wouldn't go away so I went to see my doctor, Dr. Lofgren at HealthPartners in St. Cloud, MN where I was living and going to school. After an examination which included an ultrasound, my doctor said he really didn't see anything wrong but would schedule me for more tests. Prior to those tests being conducted though, in January of 2009, I moved from St. Cloud to Wadena, MN, in order to change schools. However, I went to the Wadena Tri-County hospital because my pain was still present and persistent. I saw a Dr. Heidi Olsen who scheduled more tests of the type I guess that had been scheduled with my doctor in St. Cloud. But before these tests could be taken, I was unfortunately arrested by the Aitkin County Sheriffs Department for driving under the influence. This was on February 16, 2010. As soon as I arrived at the jail I was asked during the intake interview whether I was injured or had any pain and I informed the staff of my abdominal problems and that I was under a doctor's care and scheduled for tests. I was told that the nurse would be on the following day and that I would be put on the sick call list to see her. The following day I did see the nurse, but nothing was done. She made a few notes in my file, but no further action was taken. A short period of time passed and I put in a written request to see the nurse again and to follow up on my first visit. I even obtained two letters from my doctor Heidi Olsen in Wadena stating that I needed to be examined by someone because of my condition and on-going pain. Again, nothing happened. In the following weeks and months, I put in numerous requests to see someone and never did, except the jail nurse, and even she stopped seeing me and began to ignore me and my written requests. There are only two people who a person can see in the Aitkin county jail if they have medical problems. Either the jail nurse or a physician's assistant who is supposed to be on call for anything that the jail nurse can't handle.

The situation with my pain went on and on and nothing was being done. So I finally filed a grievance with jail administration. I had a meeting with Deb Hamilton and Jeremy Swenson, administrator and assistant administrator, and the jail nurse. At that time I was told that if I had any pre-existing conditions before I came to jail, the jail would not pay or be liable for any medical treatment. And since I did not have any insurance to cover my own medical expenses; short of me lying on the ground bleeding, I would not see a doctor for anything as vague as abdominal pain. Also, if I was in so much pain, I could plead guilty to driving under the influence offense, be transferred to the Department of Corrections, and be treated by them, who had the means to provide medical care for me. I threatened to write to the Department of Corrections Inspection and Enforcement Unit to file a formal complaint and was laughed at and told by Deb Hamilton to "go ahead." That was all! Just "go ahead."

I wrote four letters to the Inspection and Enforcement Unit, and was ignored by them also. The inspection and Enforcement unit is supposed to oversee all the county jails in the state in order to assure that the jails are providing the care that they need to under state law to offenders. The only reply that I ever received from the unit was from a lady

named "Dianne Grinde," who replied that she had spoke to jail staff and reviewed my records and had saw that I had seen medical personnel for treatment, but whether that treatment was appropriate she couldn't say, which makes absolutely no sense.

After this last communication from the only person that could help, I basically gave up trying to get medical care. The only option I had was to try to get insurance through the state, and I filed an application with the Aitkin County Health and Human Services office. My application was turned down and the reason given was that I was under the care of the Aitkin County Jail and the Department of Corrections, who were responsible for my medical care. This rejection was in June of 2009.

About four months after my arrest, I was lying on my bunk and moved to roll over and felt a sharp pain in my abdomen and discovered a large lump that had developed on my left upper torso. I immediately put in a written request to see the nurse again and surprisingly was seen. She finally examined me and felt the lump, stated that she did not know what it was and said that I would need to see someone. Almost a month after that, I finally saw the other medical person for the jail, Janet Larsen, the physicians assistant. She examined me and stated, "I think its just impacted fecal matter from lying around too much. Your constipated and need a laxative." So this is what she did. The laxative did nothing to ease the lump in my side, or the pain I was in. For the next five months, until my case was resolved and I was sent to the Department of Corrections, I sat in my cell, in pain, with a lump on my side getting bigger and bigger.

On August 18, 1009, I finally plead out to my case and was transferred to the D.O.C. I immediately put in to see the doctor and he informed me that the lump in my side was no constipation as diagnosed by Janet Larsen, but my spleen which was only supposed to be about 5 ounces in weight but had swelled up to the size of a football, and he suspected cancer right away. In less that a week he set me up for a cat scan and he determined that yes, I did have cancer and that it was advanced due to the swelling of my spleen. It had spread. I began seeing a specialist named James Shanks, oncologist, at St. Johns Hospital in Maplewood, MN, who informed me that yes, I did have cancer, specifically a type known as "Mantle Cell Lymphoma," which is one of the rarer of the non-Hodgkin's lymphomas comprising about only 6% of all lymphoma cases. There are only about 15,000 cases presently in the U.S. I was also told by Dr. Shanks that if caught early, this type of cancer had about a 50/50 cure rate. Mine wasn't caught early because I sat in the Aitkin County Jail for almost a year receiving no medical treatment. It had spread to my spleen, liver and lymph nodes, and was now at stage four.

Since my cancer wasn't caught early, my median survival rate and life expectancy would only be about 4-5 years.

To make a long story short, the jail refused to provide me with medical care and was negligent in their duties to do so. The Department of Corrections failed in its duty to investigate and determine that I was receiving the medical care that I was entitled to under state law.

Thank you for your time and I await your reply.

Sincerely,

James M. Vogel 208 979
James M. Vogel
2/10/2011

NOTICE: Mailed from a MN Correctional Facility
Name: James M. Vogel
OID#: 20B979
Address: 7525 4th Avenue
City/State/Zip: Lino Lakes, MN 55014

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BY MAIL
FEB 22 2011
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CLERK OF COURT
U.S. DISTRICT COURT
100 FEDERAL BUILDING
315 NORTH ROBERT STREET
SAINT PAUL, MINNESOTA 55101

